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5 Tile Industry Health and Welfare Fund

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8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION  
10

11 BOARD OF TRUSTEES OF THE  
12 TILE INDUSTRY HEALTH AND  
WELFARE FUND,

13 Plaintiff,

14 v.

15 CURTIS CLARK SAMPLE, an  
individual,

16 Defendant.  
17

CASE NO.: 5:24-cv-2505

COMPLAINT FOR BREACH OF  
WRITTEN COLLECTIVE  
BARGAINING AGREEMENT AND  
RELATED TRUST AGREEMENTS,  
VIOLATION OF SECTION 515 OF  
ERISA and BREACH OF  
CONTRACT

18 Plaintiff BOARD OF TRUSTEES OF THE TILE INDUSTRY HEALTH AND  
19 WELFARE FUND complains and alleges as follows:

20 **JURISDICTION AND VENUE**

21 1. This Court has jurisdiction over this case under Section 502(e) of the  
22 Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C  
23 § 1132(e), which grants the United States District Courts jurisdiction over civil actions  
24 brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3),  
25 to redress violations or enforce the terms of ERISA or an employee benefit plan  
26 governed by ERISA. Such jurisdiction exists without respect to the amount in  
27 controversy or the citizenship of the parties, as provided in Section 502(f) of ERISA,  
28 29 U.S.C. § 1132(f).

2. This Court also has jurisdiction over this case pursuant to Section 301(a) of the Labor Management Relations Act of 1947 ("LMRA"), as amended, 29 U.S.C. § 185(a), which grants the United States District Courts original jurisdiction over suits for violation of contracts between an employer and a labor organization in an industry affecting commerce, without respect to the amount in controversy and the citizenship of the parties.

3. The subject Trust Funds (defined *infra*) are administered by Boards of Trustees in the City of West Covina, County of Los Angeles. Venue is therefore proper in this Court pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), and Section 301(a) of the LMRA, 29 U.S.C. § 185(a), as it is the district in which the subject employee benefit plan and associated plans are administered, it is the district in which the relevant acts took place, and it is the district in which monies are due and payable.

4. To the extent this Complaint sets forth any state law claims, this Court has supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1367(a).

**PARTIES**

5. Plaintiff BOARD OF TRUSTEES OF THE TILE INDUSTRY HEALTH AND WELFARE FUND (“Plaintiff”) is the governing body of the Tile Industry Health and Welfare Fund; aka Tile Insurance Trust Fund. The Tile Industry Health and Welfare Fund; Tile Industry Retirement Savings Trust Fund; Bricklayers & Trowel Trades International Pension Fund; Joint Apprenticeship Trust Fund Tile Laying Industry; Tile and Marble Labor Management Trust; International Masonry Institute; Southern California Tile, Marble & Terrazzo Compliance Trust Fund; Tile Employers Contract Administration Fund (collectively “Trust Funds”) are jointly administered labor management trust funds which were established and are maintained according to the provisions of their respective Agreements and Declarations of Trust, pursuant to LMRA § 302(c)(5), 29 U.S.C. § 186(c)(5).

6. The Tile Industry Health and Welfare Fund is authorized by the respective Boards of Trustees of the Trust Funds to receive and collect contributions on behalf of

1 the Trust Funds. The Trust Funds are multiemployer plans within the meaning of  
2 ERISA §§ 3(37)(A) and 515, 29 U.S.C. §§ 1002(37)(A) and 1145. Plaintiff is a  
3 fiduciary with respect to the Tile Industry Health and Welfare Fund within the meaning  
4 of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). The Tile Industry Health and Welfare  
5 Fund provides employee benefits pursuant to a multiemployer plan as defined in  
6 ERISA section 3(37)(A), 29 U.S.C. § 1002(37)(A).

7       7. The Trust Funds are each duly organized and operating in this State, or  
8 Washington, D.C.

9       8. SAMPLE TILE AND STONE, INC., a California corporation  
10 (“SAMPLE”) is, and at all times relevant herein was, a corporation organized and  
11 existing under the laws of the State of California with its principal place of business in  
12 San Bernardino, California.

13       9. Plaintiff is informed and believes that Defendant CURTIS CLARK  
14 SAMPLE, an individual (“Defendant CURT SAMPLE”), is an individual residing in  
15 Riverside, California, and the Chief Executive Officer, President, and sole shareholder  
16 of SAMPLE.

17       10. Plaintiff is informed and believes that Defendant CURT SAMPLE is  
18 liable for the acts of SAMPLE alleged in this Complaint as its alter ego. At all times  
19 relevant hereto, SAMPLE was the alter ego of Defendant CURT SAMPLE, and there  
20 existed a unity of interest and ownership between SAMPLE and Defendant CURT  
21 SAMPLE such that any separateness between them had ceased to exist in that  
22 Defendant CURT SAMPLE completely controlled, dominated, managed, and operated  
23 SAMPLE to suit his convenience.

24       11. Plaintiff is informed and believes that, specifically, at all times relevant  
25 hereto, Defendant CURT SAMPLE (1) controlled the business and affairs of  
26 SAMPLE; (2) disregarded legal formalities and failed to maintain arm’s length  
27 relationships between himself and the corporate entity; (3) inadequately capitalized the  
28 corporate entity; and (4) held himself out as personally liable for the debts of the

1 corporate entity.

2 12. Plaintiff is informed and believes that, at all times relevant thereto,  
3 SAMPLE was not only influenced and governed by Defendant CURT SAMPLE, but  
4 there was such a unity of interest and ownership that the individuality, or separateness,  
5 of Defendant CURT SAMPLE and SAMPLE had ceased, and that the facts are such  
6 that an adherence to the fiction of the separate existence of these entities would, under  
7 the particular circumstances, sanction an inequity, injustice, or an overall element of  
8 unfairness. Particularly, Plaintiff is informed, and on that basis alleges that recognition  
9 of the privilege of separate existence would promote injustice and allow Defendant  
10 CURT SAMPLE to avoid payment to Plaintiff as required under statute and contract,  
11 when Defendant CURT SAMPLE in bad faith dominated and controlled SAMPLE as  
12 follows:

- 13 a. Defendant CURT SAMPLE failed to maintain minutes and/or  
14 adequate corporate records of SAMPLE.
- 15 b. Defendant CURT SAMPLE failed to adequately capitalize  
16 SAMPLE.
- 17 c. Defendant CURT SAMPLE diverted assets from SAMPLE to  
18 himself, to the detriment of creditors, including Plaintiff.

19 13. For all of these reasons, Defendant CURT SAMPLE is liable for the acts  
20 of SAMPLE alleged in this Complaint as its alter ego.

21 **BACKGROUND FACTS**

22 14. SAMPLE has, at all times relevant herein, been signatory to the collective  
23 bargaining agreement between the Associated Tile Contractors of Southern Associated  
24 Tile Contractors of Southern California and the Bricklayers and Allied Craftworkers  
25 Local No. 4, California (“CBA”). The CBA incorporates, and SAMPLE agreed to be  
26 bound by, the respective Agreement and Declarations of Trust and plan documents of  
27 each of the Trust Funds (“Trust Agreement” and together with the CBA,  
28 “Agreements”). A true and correct copy of the Tile Layer, Tile Finisher & Marble

1 Finisher Agreement covering the period of June 1, 2022, through May 31, 2026 is  
2 attached hereto and incorporated herein by reference as Exhibit “A.” Also attached  
3 hereto, is a true and correct copy of the signature page binding SAMPLE to a prior  
4 bargaining agreement dated August 19, 2015, attached hereto as Exhibit “B.”

5 15. The Agreements require contributions to be paid to the Trust Funds,  
6 calculated upon each hour of covered work performed by employees performing work  
7 within the scope defined in the CBA. The Trust Funds provide benefits such as pension,  
8 health and welfare, and educational benefits to employees performing brick and tile  
9 work for signatory employers.

10 16. Under the Agreements, SAMPLE is required to submit remittance reports  
11 and contributions to Plaintiff at the rates set forth in the Wage Benefit Addendum to  
12 the CBA.

13 17. Particularly, SAMPLE agreed to prepare and submit true, complete and  
14 accurate written monthly contribution reports (“reports”) to Plaintiff on a timely basis  
15 showing the identities of its employees performing work covered by the Agreements,  
16 and the number of hours worked by or paid to these employees.

17 18. SAMPLE further agreed to submit the reports and employer contribution  
18 payments (“contributions”) in the amounts required by the Agreements to Plaintiff by  
19 the last day of the calendar month following the month in which the related hours were  
20 worked, and if not so submitted, is deemed delinquent and in violation of the  
21 Agreements.

22 19. SAMPLE is also required to permit periodic audits by Plaintiff under the  
23 terms of the Agreements.

24 20. Under the Agreements, in the event of a delinquency, employers are liable  
25 for interest at the rate of ten percent (10%) per annum from the contribution due date  
26 until paid, and liquidated damages calculated at the rate of twelve percent (12%) per  
27 annum. However, if an employer has more than two delinquencies within a rolling  
28 twelve (12) month period, upon the occurrence of a third (3rd) delinquency within a

1 rolling twelve (12) month period, interest on such delinquent contributions shall accrue  
2 at the rate of eighteen (18%) per annum from the Delinquency Date until payment is  
3 made in full. Further, liquidated damages on such delinquent contributions shall accrue  
4 at the rate of twenty percent (20%) per annum, and will be assessed immediately on  
5 the Delinquency Date. Here, due to the multiple delinquencies of SAMPLE, the higher  
6 rates on interest (18% per annum) and liquidated damages (20% per annum) apply.  
7 Additionally, under the Agreements, SAMPLE is liable for all other costs and expenses  
8 including, but not limited to, attorney's fees and costs, and audit fees and costs, incurred  
9 by Plaintiff.

10 **FIRST CLAIM FOR RELIEF**

11 **BREACH OF WRITTEN COLLECTIVE BARGAINING**  
12 **AGREEMENT AND RELATED TRUST AGREEMENTS PURSUANT TO**  
13 **SECTION 301(A) OF THE LMRA**

14 **(Against Defendant CURT SAMPLE as alter ego of SAMPLE)**

15 21. Plaintiff hereby incorporates by reference paragraphs 1 through 20 above  
16 to the same effect as if set forth verbatim here.

17 22. Plaintiff is informed and believes, and alleges thereon, that at relevant  
18 times herein, SAMPLE performed work covered by the Agreements for which it failed  
19 to pay contributions, in violation of the Agreements.

20 23. For the months of April, May, and June 2023, SAMPLE submitted reports  
21 to the Trust Fund, showing the total of \$381,921.01 in contributions due for those three  
22 months. SAMPLE has only made partial payment of these amounts, as discussed in  
23 depth below. To date, \$234,849.40 in contributions remain outstanding. Additionally,  
24 pursuant to the Agreements, a total of \$71,497.64 in interest, and \$79,441.83 in  
25 liquidated damages have accrued to date, and these amounts will continue to accrue.

26 24. Additionally, at the time of this Complaint, Plaintiff is informed and  
27 believes that SAMPLE has failed to provide payment as required by the Agreements  
28 for the time period of September 2024 to present.

1 25. Lastly, further amounts may be due or become due subsequent to the filing  
2 of this Complaint, or additional amounts might be due unknown to Plaintiff at this time.

3 26. By reason of the foregoing, Plaintiff is informed and believes that  
4 SAMPLE has breached the Agreements and failed to pay contributions, interest and  
5 liquidated damages in an amount exceeding \$385,788.87.

6 27. There is no legal excuse for SAMPLE's breach of the Agreements.  
7 Plaintiff warrants that all conditions, covenants and promises on their part that are or  
8 were required to be performed as conditions precedent for SAMPLE's performance  
9 under the Agreements have been properly performed.

10 28. It has been necessary for Plaintiff to engage legal counsel and incur costs  
11 for the purpose of collection of contributions and other amounts. Plaintiff is entitled to  
12 reasonable attorney's fees and costs, and audit fees and costs, in connection therewith  
13 pursuant to the Agreements.

14 29. The Agreements do not require Plaintiff to exhaust administrative  
15 remedies before initiating this action.

16 **SECOND CLAIM FOR RELIEF**

17 **VIOLATION OF SECTION 515 OF ERISA**

18 **(Against Defendant CURT SAMPLE as alter ego of SAMPLE)**

19 30. Plaintiff hereby incorporates by reference paragraphs 1 through 29 above  
20 to the same effect as if set forth verbatim here.

21 31. Plaintiff is informed and believes, and alleges thereon, that at relevant  
22 times herein, SAMPLE performed work covered by the Agreements for which it failed  
23 to pay contributions, in violation of the Agreements.

24 32. For the months of April, May, and June 2023, SAMPLE submitted reports  
25 to the Trust Fund, showing the total of \$381,921.01 in contributions due for those three  
26 months. SAMPLE has only made partial payment of these amounts, as discussed in  
27 depth below. To date, \$234,849.40 in contributions remain outstanding. Additionally,  
28 pursuant to the Agreements, a total of \$71,497.64 in interest, and \$79,441.83 in



1 liquidated damages have accrued to date, and these amounts will continue to accrue.

2 33. Additionally, at the time of this Complaint, Plaintiff is informed and  
3 believes that SAMPLE has failed to provide payment as required by the Agreements  
4 for the time period of September 2024 to present.

5 34. Lastly, further amounts may be due or become due subsequent to the filing  
6 of this Complaint, or additional amounts might be due unknown to Plaintiff at this time.

7 35. By reason of the foregoing, Plaintiff is informed and believes that  
8 SAMPLE has breached the Agreements and failed to pay contributions, interest and  
9 liquidated damages in an amount exceeding \$385,788.87.

10 36. There is no legal excuse for SAMPLE's breach of the Agreements.  
11 Plaintiff warrants that all conditions, covenants and promises on their part that are or  
12 were required to be performed as conditions precedent for SAMPLE's performance  
13 under the Agreements have been properly performed.

14 37. It has been necessary for Plaintiff to engage legal counsel and incur costs  
15 for the purpose of collection of contributions and other amounts. Plaintiff is entitled to  
16 reasonable attorney's fees and costs, and audit fees and costs, in connection therewith  
17 pursuant to the Agreements.

18 38. The Agreements do not require Plaintiff to exhaust administrative  
19 remedies before initiating this action.

20 **THIRD CLAIM FOR RELIEF**

21 **BREACH OF WRITTEN CONTRACT - PAYMENT AGREEMENT**

22 **(Against Defendant CURT SAMPLE)**

23 39. Plaintiff hereby incorporates by reference paragraphs 1 through 38 above  
24 to the same effect as if set forth verbatim here.

25 40. On or about August 15, 2023, Plaintiff, on the one hand, and SAMPLE  
26 and Defendant CURT SAMPLE, on the other hand, entered into a Payment Agreement  
27 ("Payment Agreement") to repay \$381,921.01 in contributions, \$10,287.67 in interest,  
28 and \$11,430.75 in liquidated damages, that was delinquent to Plaintiff at that time. The



1 Payment Agreement required payment in the following amounts:

- 2 (a) On September 15, 2023, and on the fifteenth (15th) of the month  
3 for each month through January 15, 2024, SAMPLE and/or  
4 Defendant CURT SAMPLE were to make a monthly payment in  
5 the amount of \$15,000.00;
- 6 (b) On February 15, 2024, SAMPLE and/or Defendant CURT  
7 SAMPLE were to make a monthly payment in the amount of  
8 \$40,000.00;
- 9 (c) On March 15, 2024, and on the fifteenth (15th) of the month of each  
10 month through July 15, 2024, SAMPLE and/or Defendant CURT  
11 SAMPLE were to make a monthly payment in the amount of  
12 \$15,000.00;
- 13 (d) On August 15, 2024, SAMPLE and/or Defendant CURT SAMPLE  
14 were to make a monthly payment in the amount of \$40,000.00;
- 15 (e) On September 15, 2024, and on the fifteenth (15th) of the month  
16 for each month through January 15, 2025, SAMPLE and/or  
17 Defendant CURT SAMPLE were to make a monthly payment in  
18 the amount of \$15,000.00; and
- 19 (f) On February 15, 2025, SAMPLE and/or Defendant CURT  
20 SAMPLE were to make a final balloon payment in the amount of  
21 \$139,953.61.

22 41. The Payment Agreement also specifically required that Defendant CURT  
23 SAMPLE accept personal liability for the amounts due under the Payment Agreement.  
24 A true and correct copy of the Payment Agreement is attached hereto and incorporated  
25 herein by reference as Exhibit "C."

26 42. The Payment Agreement also specifically required that Defendant CURT  
27 SAMPLE become personally responsible for the continued prompt payment of current  
28 contributions that became due and owing to the Trust Funds under the Agreements for

1 the entire period of the payment term beginning July 2023 until the Payment  
2 Agreement was paid in full.

3 43. Unfortunately, SAMPLE and Defendant CURT SAMPLE have breached  
4 the Payment Agreement. SAMPLE and Defendant CURT SAMPLE made the  
5 payments due under the Payment Agreement through August 15, 2024. However,  
6 SAMPLE and Defendant CURT SAMPLE made numerous payments late, and Plaintiff  
7 was required to serve SAMPLE and Defendant CURT SAMPLE with Notices of  
8 Default pursuant to the terms of the Payment Agreement numerous times.

9 44. Thereafter, SAMPLE and Defendant CURT SAMPLE failed to make the  
10 payments required under the Payment Agreement that became due September 15, 2024,  
11 and October 15, 2024. On November 6, 2024, Plaintiff provided Notice of Default  
12 pursuant to the Terms of the Payment Agreement, providing SAMPLE and Defendant  
13 CURT SAMPLE with until November 21, 2024, to make the required payments else  
14 face default. SAMPLE and Defendant CURT SAMPLE failed to make the required  
15 payments by the date required by the Notice of Default.

16 45. Therefore, with accrued interest, the total now due on the Payment  
17 Agreement is \$206,251.28. Plaintiff has been damaged in this amount by SAMPLE  
18 and Defendant CURT SAMPLE's breach of this Payment Agreement. Interest in the  
19 amount of ten percent continues to accrue.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, on the First and Second Claim for Relief, Plaintiff prays for a  
22 judgment against Defendant CURT SAMPLE, as follows:

23 1. For unpaid fringe benefit contributions, interest, and liquidated damages  
24 of at least \$385,788.87, in an amount to be shown through proof at trial;

25 2. For pre-judgment interest on all contributions due at the contractual rate  
26 in an amount to be shown through proof at trial;

27 3. For liquidated damages on all contributions due at the contractual rate in  
28 an amount to be shown through proof at trial;

